



Office of the President

**National District Attorneys Association**

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April 12, 2004

The Honorable Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: RM-10865/DA No. 04-700  
Comments on the CALEA Petition for Rulemaking**

Dear Ms Dortch:

The members of the National District Attorneys Associations serve as the prosecuting attorneys for every county, town and city in this nation. As such we represent the interests of our citizens in criminal actions and, accordingly, prosecute the vast majority of criminal cases in the United States.

Since at least 1992 this Association, through actions of its Board of Directors, has continually urged that law enforcement be capable, with proper authority, to safeguard our citizens through the use of electronic surveillance techniques. I assure you that our members, elected to be in the forefront in our war against crime and terrorism, strongly adhere to our original resolution and its articulation in the Communications Assistance to Law Enforcement Act (CALEA).

This issue is particularly crucial to those of us fighting crime at the local level. Over half of all authorized criminal wiretap orders are done by state and community law enforcement agencies. Electronic surveillance is a sophisticated, complicated and costly operation not entered into lightly by law enforcement.

It is, and has been, our view that the continued ability to intercept telecommunications, pursuant to a *court authorized wiretap*, is a crucial investigative technique. The change from traditional telephonic communications to those permitted by newer communications models, including broadband Internet access, voice over IP telephony ("VoIP"), push-to-talk digital dispatch services, and other packet mode services, does not alter our beliefs- nor should it yours. It is our belief and understanding that CALEA was intended to cover these technological advances without continual opposition by those changed with the responsibility of insuring that law enforcement has authorized access.

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*To Be the Voice of America's Prosecutors and to Support Their Efforts to Protect the Rights and Safety of the People*

For over a decade we have been pleading for the tools and the laws we need to protect the people in our communities. We will never know if we could have prevented the tragic consequences of September 11<sup>th</sup> had we had the investigative tools we have been asking for since 1992. We only know that we will need every advantage to prevent such a tragedy from ever occurring again.

In 1994, the late William O'Malley, the District Attorney of Plymouth County, Massachusetts, and the President of this Association, testifying before the Senate Judiciary Committee stated that:

“If the law enforcement community does not have the opportunity to keep pace with advanced telecommunication technologies then the criminals who do have access to this technology will operate with impunity.”

To counter the threat of criminals and terrorists that communicate on a worldwide basis in real world time we need at least some semblance of parity. International terrorists and drug dealers alike have access to the latest in technology and, as continually been shown, are not loathe to exploit their superiority. The “Joint Petition For Expedited Rulemaking” (RM-10865)” (the Petition) submitted by the US Department of Justice (DOJ), the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA) provides us that opportunity.

Local and state law enforcement agencies need “broadband access” and “broadband telephony” services to be clearly subject to CALEA. The Petition requests service made available by a broadband access provider, regardless of the technology, fall within the scope of services covered by CALEA and that access to communications, when properly authorized by law, be guaranteed to law enforcement.

We also join the DOJ, FBI and DEA in requesting the FCC to reaffirm the previous declaration that “push-to-talk” digital dispatch service is covered by CALEA. The growing popularity of this service and the increasing number of wireless carriers that offer the service require a clear acknowledgment of obligations under CALEA...

Now the Commission has the opportunity to either help answer our fears and frustrations or to add to them. If the law enforcement community does not have the opportunity to keep pace with advanced telecommunication technologies then the criminals who do have access to this technology will operate with impunity. They know where the gaps in our coverage lay and are not loath to exploit our weakness to our detriment.

We are all continually amazed with the almost daily announcement of technological advances. As Americans, we proudly hail the work of our scientists. The “information highway” is more than a cliché and is rapidly becoming the thread from which the fabric of our nation is woven. I can assure you that the law enforcement and legal communities are and, will continue to be, a part of that enterprise. We simply ask that our scientists

and engineers put their enormous talents to work in assuring that law enforcement is not left blindfolded.

The debate about the need for electronic surveillance in fighting crime has already taken place. The federal government and most state governments have resolved that, in certain cases, and as a last resort, law enforcement may seek an impartial court order to perform limited electronic surveillance. District attorneys support this cautious, restrictive approach. The problems raised by new technologies should not be used as a gambit by opponents of electronic surveillance to reopen this debate. Further, claims by these critics that prosecutors seek increased use of electronic surveillance are simply not true. Let me make it clear that we are asking only to preserve what Congress and our state legislatures have determined is a critical tool in fighting crime.

Criminals who victimize us as a nation have access to and do not hesitate to use, the latest in technology. We, as both citizens and as those who work in the daily fight against crime, urge you not to further handicap our police forces. We strongly encourage that the needs of law enforcement and the citizens we protect, be given full weight in your deliberations on final action by the FCC on the Petition. Anything less cannot guarantee our ability to effectively enforce the laws of our nation or our ability to protect our citizens.

Very Truly Yours,



Robert P. McCulloch  
Prosecuting Attorney, St Louis County, Missouri  
President, National District Attorneys Association

cc: The Attorney General  
Director, Federal Bureau of Investigation  
Administrator, Drug Enforcement Agency  
Board of Directors, National District Attorneys Association